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*Attorneys for Plaintiffs***UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,  
JEREMY DAVIS, CHRISTOPHER CASTILLO,  
and MONIQUE TRUJILLO individually and on  
behalf of all other similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

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Case No.: 4:20-cv-03664-YGR-SVK

**RESPONSE TO REQUEST ON  
AVAILABILITY OF PUNITIVE  
DAMAGES**

Judge: Hon. Yvonne Gonzalez Rogers

On March 2, 2023, the Court reminded the parties it requested “briefing on the issue of whether punitive damages are recoverable where the underlying remedy sought is injunctive relief, not monetary damages.” Dkt. 885 at 1 n.2. Plaintiffs’ counsel have not found a case where punitive damages were awarded to a 23(b)(2) class where the underlying remedy sought is solely injunctive relief, not monetary damages. *See* Cal. Civ. Code § 3294(a); *see also* *Cal. v. Altus Finance S.A.*, 540 F.3d 992, 1000 (9th Cir. 2008) (“California courts have long interpreted Section 3294 to require an award of compensatory damages, even if nominal, to recover punitive damages.”).

To the extent helpful to the Court, we identify the following cases and authorities discussing this issue, including the potential availability of punitive damages for a 23(b)(2) class where monetary relief exists that is “incidental” to the injunctive relief. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011) (courts may award monetary relief to 23(b)(2) classes so long as it is “incidental to the injunctive or declaratory relief”); *Risto v. SAG-AFTRA*, 2020 WL 5518600, \*12 (C.D. Cal. Sept. 14, 2020) (monetary relief is “incidental” when it “consists of ‘damages that flow directly from liability to the class as a whole on the claims forming the basis of the injunctive or declaratory relief’”) (quoting *Dukes*, 564 U.S. at 366); *Johnson v. Meriter Health Servs. Emp. Ret. Plan*, 702 F.3d 364, 372 (7th Cir. 2012) (monetary relief is “incidental” where calculation is “mechanical, formulaic, a task not for a trier of fact but for a computer program”); *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 987 (9th Cir. 2011) (remanding so the “court may consider whether punitive damages are an allowable form of incidental monetary relief” under *Dukes*) (marks omitted); *Opperman v. Path*, 2016 WL 3844326, at \*16 (N.D. Cal. July 15, 2016) (“[b]ecause the purpose of punitive damages is not to compensate the victim, but to punish and deter the defendant, any claim for such damages hinges, not on facts unique to each class member, but on the defendant’s conduct toward the class as a whole”) (quoting *Barefield v. Chevron, U.S.A., Inc.*, 1988 WL 188433, at \*3 (N.D. Cal. Dec. 6, 1988)); *Delarosa v. Boiron, Inc.*, 275 F.R.D. 582, 592–93 (C.D. Cal. 2011) (finding punitive damages and statutory damages “incidental”); *Risto*, 2020 WL 5518600 at \*13 (permitting 23(b)(2) class to seek punitive damages because “incidental” and “will not raise any

individualized damages questions.”); 2 Newberg and Rubenstein on Class Actions § 4:37 (6th ed.)  
(discussing monetary relief for 23(b)(2) classes).

Dated: May 2, 2023

Respectfully submitted,

By: /s/ Mark C. Mao

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